SUMMARY OF PUBLIC COMMENTS AND THE BOARD'S RESPONSES

I.

Introduction

The State Personnel Board (Board) proposes to adopt, amend, and repeal sections 170 et seq. of Title 2, Chapter 1, of the Code of Regulations (CCR). A 45-day public comment period on this rulemaking action was held from August 3, 2018, through September 17, 2018. A public hearing was held on September 20, 2018. The comments received by the Board were taken under submission and considered. A summary of those comments and the Board's responses are below.

II.

Summary of Written Comments from Nellie D. Lynn, Director of Representation, Association of California State Supervisors (ACSS).

Comment 1:

Proposed § 249.8 (Holds on Employees).

ACSS suggests that the maximum amount of time an appointing power may hold an employee who has accepted a transfer, voluntary demotion, or promotion within the same or different appointing power should be calculated from the date the new appointing power submits a written request for the employee's service, rather than from the date the employee provides written notice of the employment change. ACSS urges this amendment because it would mirror the current practice and be consistent with Rule 425 and proposed Rule 433, covering voluntary transfers.

Response 1:

For consistency and clarity with other Board rules, proposed Rule 249.8, subdivisions (a) and (b) have been further amended to specify that the allowable hold time is calculated from the date the new appointing power provides written notice of the employment change. Also for purposes of consistency and clarity, the term "lateral" is stricken and replaced with "voluntary." This change is not substantive as a "transfer" is defined elsewhere in Board rules and the thrust of this proposed rule is to apply to "voluntary" transfers.

Comment 2:

Proposed § 427 (Salary Classifications and Comparisons).

ACSS states it does not know when the "maximum rate of the lowest salary range currently authorized for a classification" is used. ACSS therefore recommends eliminating this requirement and instead using the current maximum of the salary range or alternate range in which an employee is appointed. ACSS asserts using this salary comparison would bring proposed Rule 427 in line with CalHR's compensation Rule 599.674 (Rate on Movement Between Classes with Substantially the Same Salary Range) and be consistent with the definition of "substantially the same salary range" found in proposed Rule 425.

Response 2:

Proposed Rule 427 uses the "maximum rate of the lowest salary range currently authorized for a classification" for purposes of transfers. This calculation has been used for years without issue and avoids transfers where the salary difference between the "from" and "to" positions may be in a promotional salary relationship, range, or level. If the maximum salary rate of the class were to be used the "to" class could conceivably be two or more steps higher where the employee seeking a transfer is in a lower salary range.

Additionally, CalHR Rule 599.674 concerns a situation that is different from the situation addressed in proposed Rule 427. Rule 599.674 sets the standards for the salary an employee will receive when the employee moves between classes with substantially the same salary range, whether the movement is by list, transfer, or other specified appointment. Thus, unlike proposed Rule 427, the rule does not compare salary ranges for purposes of a transfer.

Thus, the rationale of ACCS to conform proposed Rule 427 to Rule 599.674 is not persuasive. The Board therefore declines to make this recommended change.

Comment 3:

Proposed § 430 (Appointments Not Permitted to Transfer).

ACSS asserts that proposed Rule 430 would prohibit transfers from rank-and-file classifications to supervisory/managerial classifications and visa versa. Currently, thousands of positions are in "unassigned" classifications for purposes of collective bargaining. As defined in the pay scales, unassigned classes have "split responsibility of rank-and-file or supervisory." Individual positions within these "U" classifications are then designated as rank-and-file or supervisory for purposes of collective bargaining. The "U" classifications, as part of the Collective Bargaining Identifier (CBIS), are utilized throughout state government and various bargaining units and related supervisory employees. Examples include:

Associate Budget Analyst (5284), CBID U01
Senior Deputy State Public Defender (5772), CBID U02
Office Services Supervisor I (General) (1141), CBID U04
Supervising Museum Security Officer (1988), CBID U07

As these employees are in the same civil service classification, they have been able to successfully move between rank-and-file and supervisory positions without further examination. This movement to positions within a classification should not be prohibited by this proposed rule.

Response 3:

Movement from rank-and-file responsibilities to supervisory responsibilities within a "U" designated classification is transacted by a range change not a transfer. Applicable salary rules will apply. Therefore, the instant proposed regulation would not impact "U" designated classifications.

Comment 4:

Proposed § 438 (Temporary Assignments or Loans in General).

Proposed Rule 438 lists in general when temporary assignments may be used if any of the criteria listed in the rule are met. This proposed rule is insufficient to protect the merit based system which disfavors temporary assignments where permanent positions should be utilized. Accordingly, ACSS suggests retaining language in Rule 442, subdivision (c), related to pursuing other personnel options before using a temporary assignment, and adding it to proposed Rule 438.

Response 4:

Proposed Rule 438 sets forth the general requirements for temporary assignments, because there are general provisions that are applicable to the three types of temporary assignments; yet, each type of temporary assignment is also unique as set forth in Government Code section 19050.8. Thus, for instance, requiring an appointing power to consider other personnel options when facilitating the return of an injured employee to work makes no sense.

Therefore, the structure of the Board's proposed regulation first sets forth general provisions that are applicable to the three types of temporary assignments and then sets forth specific provisions that are applicable to each type of temporary assignment. For instance, proposed rule 439.3 specifies the selection process for training and development assignments and proposed rule 440, subdivision (b), requires appointing powers to consider other management options before using a temporary assignment to meet compelling program or management needs. The Board thus declines to adopt the suggestion of ACSS.

III.

Summary of Written Comments from Charlain Swenson, Personnel Officer, Office of Human Resources, California Department of Justice (DOJ).

Comment 1:

Proposed § 170 (Civil Service Examinations and Announcements).

1. For subdivision (c), what is the definition of "in person"? For example, if an examination type is a "Supplemental Application/Training and Experience Narrative" where candidates must submit typed responses to pre-determined questions provided on the bulletin, would this be considered an "in-person" or "online" examination? Many exams require applicants to submit their examination materials with their applications, and then only those that meet the minimum qualifications are scored and added to the eligibility list.

2. Rule 548.41, subdivision (b) states that examination announcements for CEA positions shall conform to Article 8, Rule170. Is this still applicable given the new language?

Response 1:

1. Subdivision (c) only applies where the examination is taken in person. Even though "in person" is a common phrase in the dictionary—personal presence, physically, in the flesh and etc.—without any special meaning, to avoid any confusion, the rule will be further amended to add in person "at the physical location designated on the examination announcement" and to add "For purposes of this regulation, 'in person' does not include online or web based examinations taken on a computer or other digital device where a particular physical location(s) for taking the online examination is not required and not specified on the examination announcement." Other further changes are for style and clarity.

2. Yes.

Comment 2:

Proposed § 174 (Applications for Civil Service Examinations).

1. Does this section also apply to CEA examinations? Since CEA examinations are administered and advertised as vacant positions on the jobs.ca.gov website, this poses a logistical issue for meeting the electronic application requirements. Many candidates submit applications online, but the online system does not have an option for sending them their exam results electronically.

2. Subdivision (c) now specifies that applications shall not be accepted if they do not meet the filing requirements. Why is the language “shall” and not “may” to allow departments to set their own filing procedures? For examination applications, if a candidate is missing a required document (e.g., transcripts), DOJ sends the candidate a letter and allows ten business days to submit the missing information. If the candidate submits the missing documents before the ten business days, DOJ accepts the application. Is that no longer allowed with this new language? To allow for a greater benefit for applicants and departments, DOJ recommends changing the language from “shall” to “may.”

3. Subdivision (e) implies that, in the reverse situation, a handwritten signature is required for applications filed in person/submitted through postal mail. However, this requirement is not currently in regulation. DOJ asks that this regulation either be clarified or language added to include that an original signature is required for all applications submitted in person and by mail.

4. Regarding subdivision (f)(1), there are other postal authorities that can ship documents, such as FedEx, UPS, Golden State Overnight, and etc.; however, this requirement seems to limit the postmark requirement to only the United States Post Office (USPS). DOJ suggests expanding this requirement to accept dates from other postal authorities.

Response 2:

1. The scope of the CEA regulations does not include proposed rule 174 (see Rule 548 [except as may be included by specific reference, Chapters 3 through 8 of Part 2 of the Civil Service Act and the regulations stemming from that authority do not apply to the CEA category]). In addition, while the Board sets the policy and rules for civil service examinations, CalHR administers the functions and features of the online personnel system. Therefore, DOJ’s second question should be addressed to CalHR.

2. The intent of the proposed amendments to proposed Rule 174 is to promote uniform practices and procedures in the civil service hiring process so that examination applications are treated fairly and equitably no matter the agency overseeing the examination process; otherwise, applicants may be treated differently depending upon the practices and procedures of the agency holding the examination.

   It has been longstanding policy of the Board that applications received after the final filing date will be unacceptable unless a specific exemption applies. (See Selection Manual, § 6200.1 [original issue date Aug. 5, 1980; Revised July 1994].) Over the years, some departments have varied their internal policies to allow for the filing of late applications. These internal filing deadlines are not made public to applicants, though some may be made aware of the date or provided other leniency not provided to all. Such arbitrary and undisclosed variances do not benefit applicants, but only those who may be in the know. Granted, the civil service process should not

be so rule strict as to be inflexible; yet, a reasonable and fair balance must be struck particularly where a hiring procedure could be manipulated to benefit only particular applicants. It is the intent of proposed Rule 174 to strike that balance, since subdivision (h) continues to allow untimely applications to be filed where certain conditions are met. Accordingly, the Board declines to adopt this suggestion.

3. A regulation requiring original signatures on the examination/employment application form (STD. 678) is not necessary at this time. The STD. 678 form requires certification under penalty of perjury and states, “If not signed, this application may be rejected.” CalHR and the Department of Fair Employment and Housing (DFEH) are required to work cooperatively to develop uniform employment forms where possible, and agencies shall not use employment application forms that are not approved by either CalHR or DFEH. (Gov. Code, §§ 18720 & 18720.3.) Proposed rule 174 is clear that all applications must be on the form specified in the examination announcement; that form is the STD. 678. Accordingly, the Board declines to adopt this suggestion.

4. This regulation has historically required use of the U.S. mail without any issues, though there are other mail carriers. Board staff had considered recommending to the Board expanding beyond USPS, but it was unclear if all carriers date stamp an envelope or package with the clarity and consistency of the USPS. DOJ does not present any reason why this requirement should be changed other than pointing out that other mail carriers exist. At least at this time, the Board declines to adopt this suggestion.

Comment 3:

Proposed § 249.1 (Advertising for Job Vacancies).

1. The intent of this regulation requires clarification. Existing regulation 444 provides that the Executive Officer has the authority to approve postings for transfers and training and development assignments that result in an employee moving to a position that is covered by affirmative action or related to upward mobility. It also exempts departments from using these postings when the transfer or T&D is to remedy certain specified situations. The proposed regulation does not appear to be similarly limited. Is that the intent?

2. Proposed rule 249.1, subdivision (d) exempts departments from having to follow this regulation when the transfer or temporary assignment is designed to remedy those situations listed. How does this exemption relate to 249.2 that requires all electronic job postings to be performed through CalHR? Are departments expected to publicize their vacancies when the intent is to move an employee because of reasons identified in proposed Rule 249.1, subdivision (d)?

Response 3:

1. Rule 444 does apply only to transfers and training and development assignments, unless otherwise exempted. Proposed Rule 249.1 is intended to apply to situations where a department advertises for a job vacancy. Therefore, this proposed rule is broader than Rule 444, albeit the proposed rule incorporates aspects of Rule 444 in subdivision (d).

2. Agencies are not expected to publicize vacancies when the rule's exemptions apply. To ensure clarity, the language used in subdivision (a) has been further amended to include express reference to Rule 249.2. In addition, due to further changes to this proposed rule, the subdivisions have been reordered. Therefore, subdivision (d) is now subdivision (e).

Comment 4:

Proposed § 249.1.1 (Job Announcements).

1. Can CalHR add the statement about dates from mobile devices and preferred method of applying as options on the ECOS job announcement?

2. Can the proposed regulation be updated to allow departments to advertise vacancies "until filled" for hard-to-fill positions?

Response 4:

1. While the Board sets the policy and rules for civil service examinations, CalHR administers the functions and features of the online personnel system. Therefore, DOJ's question should be addressed to CalHR.

2. Proposed Rule 249.1.1, subdivision (a)(9), allows for any additional information the appointing power deems proper. Therefore, adding "until filled" to the list is unnecessary, since subdivision (a)(9) would allow information related to hard-to-fill positions to be included on the job announcement.

Comment 5:

Proposed § 249.1.2 (Job Applications).

Can CalHR modify the ECOS job announcement to include this language as an option?

Response 5:

Please see Response No. 4.1.

Comment 6:

Proposed § 249.1.3 (Timely Filing of Job Applications).

1. Can CalHR add language to the ECOS job announcement to cover the requirements?

2. Is the intent of this language to require the use of USPS versus other mail delivery companies (e.g., UPS)?

Response 6:

1. Please see Response No. 4.1.

2. Yes.

Comment 7:

Proposed § 249.8 (Holds on Employee).

1. This proposed regulation specifies the *employee* must provide written notice whereas proposed regulation 433 specifies the *gaining department* must notify the losing department in writing. Is it the employee's notice or the gaining department's notice that starts the clock?

2. Can this notification be done via email?

Response 7:

1. For purposes of consistency and clarity, proposed Rule 249.8 has been further amended to change the triggering event to notice provided by the hiring agency.

2. The proposed regulation has been further amended to add subdivision (c), "For purposes of this rule, 'written notice' may include an e-mail where both the appointing power and the hiring agency agree that the written notice may be made by way of e-mail from the hiring agency's designee to the appointing power's designee." In addition, for purposes of clarity and consistency with other regulations, the use of the term "lateral" has been stricken in subdivision (a) and replaced with "voluntary." This change is technical without substantive impact.

Comment 8:

Proposed § 280.1 (Written Justification for Limited-Term Positions).

Is the focus of this proposed regulation the establishment of limited term (LT) positions or the conversion of permanent positions to LT? The responsibility for approving the

former currently lies with the Department of Finance (DOF). In addition, DOJ requests confirmation that the regulation is regarding LT *positions* rather than LT *appointments*.

Response 8:

The focus of Rule 280.1 is limited-term appointments. The words “position” and “positions” have been changed to “appointment” and “appointments,” respectively. In addition, for reasons stated in Comment Section V., Comment and Response 5, the proposed rule is further amended to add that handwritten, electronic, or digital signatures are acceptable.

Comment 9:

Proposed § 427 (Salary Calculations and Comparisons).

DOJ requests language be added to clarify that the “current class” should be used in salary calculations and comparisons. This would clarify a scenario where an employee is using a previous A01 appointment for transfer eligibility, but the salary rule is to be applied to the current class salary.

Response 9:

Under proposed Rule 425, subdivision (a)(7), “current class” is defined to mean the class currently held by the employee, and for purposes of transfers, includes an employee’s highest permanent list appointment. To promote greater clarity, subdivision (c) is added, which states:

> Where an employee seeking to transfer has served in more than one classification, the employee’s current class, as defined in section 425, subdivision (a)(7), shall be used as the “from” class, unless using a different class held by the employee would be more beneficial to the employee for purposes of transfer.

Comment 10:

Proposed § 433 (Effective Date of Voluntary Transfers).

1. Proposed Rule 249.8 states the 30-day clock for notification starts when the employee notifies their employer in writing they are leaving. However, proposed Rule 433 states the 30-day hold period starts when the hiring department notifies the losing department. These two regulations appear to be in conflict. Which is correct?

2. How is written notice to be provided? Can departments use email to the current supervisor as their written notification of their intent to take the employee?

Response 10:

For both comments 1 and 2, please see Response 7.1. In addition, upon further review, proposed Rules 249.8 and 433 are sufficiently similar to be combined. The only standard that is different between the regulations is subdivision (b) of Rule 433. The purpose of subdivision (b) is to ensure that employees and hiring agencies do not attempt to skirt the 30-day hold time by, for instance, resigning from civil service and then reinstating into civil service. This prohibition has been a long standing Board rule (see current Rule 425). However, such a workaround is risky and has such negative impacts on an individual's salary, benefits, and tenure in civil service that the likelihood of this occurring seems farfetched. Accordingly, for purposes of avoiding substantially duplicative rules and a standard that is for all practical purposes unnecessary, proposed Rule 433 is stricken in its entirety.

Comment 11:

Proposed § 437 (Definitions).

1. Subdivision (h) defines a consecutive temporary assignment or loan to include assignments that perform the same level of duties and responsibilities as the temporary assignment or loan previously concluded. Past practice has been to allow a consecutive temporary assignment as long as it is a different assignment. DOJ requests that the language be revised to state "same assignment" rather than "same level of duties and responsibilities"?

2. It is unclear where these terms are—or will be—used. DOJ requests clarification of where these definitions are used (e.g., "coaching").

Response 11:

1. The proposed wording has greater specificity than "same assignment," as that phrase could be open to varying interpretation (e.g., to mean only the same position). Therefore, the Board declines to make the suggested change.

2. These terms are incorporated in proposed Rule 438, subdivision (a)(1).

Comment 12:

Proposed § 438.2 (Employment Relationship and Salary).

Why is subdivision (c) regarding "same salary rate" in a temporary assignment being deleted?

Response 12:

It was not the intent to strike subdivision (c). For purposes of clarity, the proposed rule should include a provision concerning the salary rate of employees serving in temporary assignments or loans. It has been longstanding that an employee serving in a temporary assignment or loan receives the same salary rate he or she received before taking the assignment. For an employee serving an assignment in a different classification with a higher salary range, this arrangement is not wholly beneficial, particularly if the assignment is longer. Certainly, the employee gains experience in such a circumstance and is able to use that experience for career opportunities; still, it should also be considered that there are salary disadvantages, and the salary and benefits of employees on temporary assignments or loans could be the subject of collective bargaining.

Therefore, for purposes of ensuring this proposed rule is not overly restrictive, subdivision (a) is further amended to include reference to "unless a collective bargaining agreement between the state and a recognized employee organization provides otherwise." In addition, subdivision (b) is further amended to state:

> The employee's salary may be paid in any proper manner agreed upon by the participating agencies and the salary rate shall be the same salary rate as the employee received prior to the temporary assignment, not the salary rate of the temporary assignment classification, unless a collective bargaining agreement between the state and a recognized employee organization provides otherwise.

Other changes are technical and intended to conform to the afore-stated amendments.

Comment 13:

Proposed § 438.6 (Use of Out-of-Class Experience).

Does this proposed regulation only apply to open and promotional examinations, or does it apply to open, non-promotional and open-promotional as well? If it applies to all examinations, DOJ suggests removing the language, "promotional and open" from the regulation.

Response 13:

Government Code section 19050.8 refers only to open and promotional exams, not to limited term examinations. Accordingly, proposed Rule 438.6 does not apply to all examinations. Regardless, for purposes of clarity, the proposed rule is further amended to say, "open, open-promotional, promotional, and non-promotional examinations."

Comment 14:

Proposed § 439 (Purpose of Training and Development Assignments).

Will using a T&D for the scenario stated in subdivision (b) still be delegated to departments? If the delegation is being taken away from departments, what is the reason?

Response 14:

Subdivision (b) is intended to make clear that where an employee has been selected for appointment to a deep class by way of a voluntary transfer and the employee will incur a loss in salary, the rules and policies related to deep class salaries applies and is within the authority and discretion of CalHR. Accordingly, these questions should be addressed to CalHR.

Comment 15:

Proposed § 439.3 (Selection Process for Training and Development Assignments).

If a position is advertised without training and development language and the selected employee accepts the appointment by way of transfer, can the department still place the employee on a training and development assignment in order to prevent the employee from incurring a salary loss in a deep class without having to re-advertise with the T&D language? CalHR policy 1704 currently allows for this.

Response 15:

For purposes of clarity, proposed Rule 439.3 is further amended to add reference to proposed Rule 439, subdivision (b). Other changes are for style and clarity.

Comment 16:

Proposed § 440.1 (Eligibility for Temporary Assignments to Meet Compelling Program or Management Needs).

DOJ requests that the requirement for meeting minimum qualifications be removed. When an employee accepts one of these assignments, they stay in their original classification. In the State Controller's system, this type of assignment is keyed in as an A04, which is the same as a training and development assignment. An employee on a T&D does not have to meet the minimum qualifications of the new classification. In addition, most MQs are significantly outdated and may prohibit the most qualified applicant from taking on these temporary assignments.

Response 16:

The purpose of temporary assignments to meet a compelling program or management needs is to enable agencies to obtain needed expertise. (Gov. Code, § 19050.8.) To be consistent with the other two types of temporary assignments, the Board has removed the requirement that the employee meet the minimum qualifications.

Comment 17:

Proposed § 440.2 (Advertising for Available Temporary Assignments to Meet Compelling Program or Management Needs).

1. This proposal will hinder departments in quickly meeting critical needs. When these types of assignments are used, they typically need to be filled quickly. If departments are required to start advertising for a minimum of three days, and to do so in physical locations, it could delay filling the position. DOJ believes management should have the discretion to advertise these positions.

2. Why are these types of appointments required to be posted in a physical location in addition to the departments' online sites?

3. Can this regulation be revised to allow for the advertising to be discretionary based on the criticality of the need?

4. Will CalHR be making changes in ECOS to allow these positions to be advertised for less than the normal required time period?

5. How effective is a three-day advertising period if the goal of this regulation is to provide fair, equitable notice to eligible candidates?

Response 17:

1. Certainly, there may be circumstances where time pressures to meet critical program or management needs exist; yet, critical program or management needs should be distinguished from emergency situations where emergency appointments are allowed. Additionally, it must be considered that merit principles are involved in selecting employees for temporary assignments, since selected employees gain experience that they may use for promotional or career-change opportunities. Therefore, a reasonable and fair balance must be struck between providing agencies with personnel mechanisms to meet critical program or management needs and ensuring the merit system is not manipulated to unfairly favor certain employees through the use of temporary assignments.

DOJ's comment, while raising an important issue, is conclusory rather than presenting any factual support or examples to show how the Board's proposed rule might actually prove to be overly burdensome. A three working-day rule for advertising is not unreasonably long or short given the purpose of the assignment. However, the

Board has simplified the advertisement requirement to be "posted in a manner designed to provide fair, equitable notice to all eligible candidates."

2. Please see Response No. 17.1 immediately above.

3. It is unclear from DOJ's question whether "criticality" refers to the critical nature of a program or management need, the urgency of meeting that need, or both. In any event, meeting critical program or management needs is distinct from emergency situations where fast action is required.

4. This question should be addressed to CalHR.

5. Please see Response No. 17.1 immediately above.

Comment 18:

Proposed § 440.4 (Successful Completion of Temporary Assignments to Meet Compelling Program or Management Needs).

1. What is the intent of the language that refers to the assignment being "successfully completed" in order for the experience to be used to satisfy the minimum qualifications for exams? For example, if the assignment was for nine months and after six months either the employee or management ended the assignment for reasons other than disciplinary, would the employee be able to use this time even though the assignment wasn't "completed"?

2. Does this regulation only apply to promotional and open examinations, or does it apply to open, non-promotional and open-promotional as well? If it applies to all examinations, we suggest removing the language, "promotional and open" from the regulation.

Response 18:

1. The intent of "successfully completed" is to promote successful performance while on the temporary assignment. However, where an employee has been successful in a temporary assignment to meet compelling program or management needs but the assignment ends early for reasons other than disciplinary or unsatisfactory performance, the employee should be able to use this experience for purposes of career advancement. Accordingly, proposed Rule 440.4 is further amended to add the following language: "or ends early for reasons other than disciplinary or unsatisfactory performance."

2. Please see Response No. 13.

IV.

Summary of Written Comments from Betty Saeteun, Assistant Human Resources Chief, California Department of Consumer Affairs (DCA).

Comment 1:

Proposed § 170 (Civil Service Examinations and Announcements).

1. As to subdivision (b)(1), the date and place of the examination is not applicable to all examinations, such as Education & Experience, Training & Experience, and supplemental application examinations. This language applies only to assembled examinations, such as written or qualification appraisal panel examinations, where candidates are required to physically appear to take an examination. Putting a date and location for unassembled examinations would create confusion for the applicants. DCA suggests adding "for assembled examination types" or "for examination types where the candidate must appear in person" or "when applicable" to this section.

2. Regarding subdivision (d), DCA believes the wording of this section is unclear and requests clarification. DCA questions whether this section is meant to state that certified transcripts are required, if applicable, and notes that departments have recently received direction from the CalHR that official sealed transcripts are required at the time of appointment.

Response 1:

1. For purposes of clarity, proposed Rule170, subdivision (b)(1) is further amended to add "where applicable." Also for purposes of clarity, subdivision (b)(2) is further amended to require that the final filing date for examination applications be included on the announcement and, where the exam is continuous, the cut off date(s). The re-numbering and lettering of the proposed regulation is non-substantive and intended to conform with the afore-stated changes.

2. Subdivision (d) does not require certified transcripts or address what documents are required for examinations. The intent of this subdivision is to make clear that nothing specified in the proposed rule shall be construed to prevent appointing powers from requiring applicants to file certain required documents or materials via U.S. mail, where appropriate. The language of this subdivision is sufficiently clear not to warrant further amendment.

Comment 2:

Proposed § 174 (Applications for Civil Service Examinations).

1. Currently, the email address listed on the application is the email address used to send electronic correspondences. However, as departments move toward using ECOS 3b, the notice will automatically generate and get sent to the email listed on

the applicants' ECOS profile. How are departments to proceed during the ECOS 3b transition if the email address listed on the application is different from the email address listed in ECOS? Are emails required to be encrypted, as they contain examination results? Are departments required to send an electronic notice to let applicants know that the department will be communicating by electronic mail *prior* to sending any progress notices, notices to appear, notice of exam results etc., as it is suggested in (3).

2. DCA believes that Rule 174, subdivision (h)(3) requires clarification. Is posting in a centralized location of each branch, district, institution, region, or office the only method to satisfy the posting requirement for promotional examinations? Would electronic distribution or posting on the department's website constitute notification of the promotional examination to employees?

Response 2:

1. While these questions raise important issues, the questions are technical in nature and thus are best asked of CalHR, since CalHR administers the ECOS system.

2. It is not the intent of proposed subdivision (h)(3) to limit the distribution of promotional exam announcements to only those locations. This rule identifies the circumstances in which a late application for a promotional examination shall be accepted. In such a situation, the late application shall be accepted if the appointing power verifies distribution problems with the examination announcement that prevented timely notification to an employee seeking to take the examination. If the appointing power posted the announcement in a centralized location of each branch, district, institution, region or office, notification to employees is presumed as a matter of law.

Comment 3:

Proposed § 249.1 (Advertising for Job Vacancies).

Do electronic advertisements continue to be an acceptable method of advertising?

Response 3:

Yes. For purposes of clarity, proposed Rule 249.1, subdivision (a) has been further amended to include reference to Rule 249.2.

Comment 4:

Proposed § 249.1.1 (Job Announcements).

1. Subdivisions (a)(6) and (a)(8) are duplicates.

2. DCA finds proposed rule 249.1.1, subdivision (d) to be unclear and requests clarification. Is this subdivision meant to state that certified transcripts are required, if applicable? Departments have recently received direction from CalHR that official sealed transcripts are required at the time of appointment. Sections 170, subdivision (d) and 249.1, subdivision (d) are the only two sections that mention transcripts.

Response 4:

1. The duplication was unintended. Accordingly, subdivision (a)(8) is stricken. To conform to this necessary change, the regulation is re-numbered accordingly.

2. Proposed sections 170, subdivision (d) and 249.1.1, subdivision (d) do not require that official sealed transcripts are required at the time of appointment. Board regulations do not currently address whether sealed transcripts are required. That issue is a substantive question that falls outside the scope and intent of this rulemaking action; therefore, it would not be appropriate to address this question in the instant rulemaking action. Please also see Comment Section IV. Response No. 1.2.

Comment 5:

Proposed §§ 249.8 and 433 (Holds On Employees and Effective Date of Voluntary Transfers).

The language of these proposed sections is inconsistent as to who is to provide written notice, the employee or the hiring agency. In addition, will verbal notification suffice?

Response 5:

Please see Comment Section II, Response No. 1 and Comment Section III, Response No. 7. Verbal notice will not satisfy the requirements of the proposed regulations.

Comment 6:

Proposed § 439.4(b)(1) (Successful Completion of a Training and Development Assignment).

A common current practice is to list appoint an individual to the position in which he or she served the training and development assignment after successful completion of the assignment. Will list appointments after a T&D be allowed? DCA suggests adding list appointments to the proposed rule.

Response 6:

A list appointment means that the employee must take an examination. The intent behind allowing an appointment from the training and development assignment is to

simplify and streamline the hiring process, since in most instances the employee who successfully performs in a training and development assignment is also the best candidate for that job. The purpose for establishing preliminary conditions is to ensure that the initial selection process involves competition and merit principles. Nonetheless, adding “list appointment” to this proposed rule may benefit employees and departments alike for those reasons stated in Comment Section X, Comment and Response 1. Accordingly, this proposed rule is further modified to add “list appointment.”

In addition, subdivision (a) is further amended to strike “successful” in order to clarify that an employee has a right of return to his or her former position when the T&D ends. To conform to this change, the title of the proposed rule is changed to strike “successful.” Also, for reasons stated in Comment Section III, Response 13, and for purposes of consistency, subdivision (d) is further amended to reference open, open-promotional, promotional, and non-promotional examinations.

Comment 7:

Proposed § 441.2 (Temporary Appointments for Injured Employees In Different Classifications).

DCA believes clarification is needed as to what period of time constitutes “temporary.”

Response 7:

Rule 438.1 sets the time period for all temporary assignments, including those for injured employees.

V.

Summary of Written Comments from Christine Martinez, the California State Teachers’ Retirement System (CalSTRS).

Comment 1:

Amended § 170 (Civil Service Examinations and Announcements).

Subdivision (b)(1) indicates that examination announcements shall provide the “date and place of the examination.” For examinations that are administered online or career executive assignment exams where a physical location for taking the exam does not exist, what is the expectation for appointing powers to indicate as the “date and place of the examination” on these bulletins?

Response 1:

Please see Comment Section IV., Response 1.1.

Comment 2:

Proposed § 249.1.1 (Job Announcements).

Subdivision (a)(8) is a duplicate of (a)(6).

Response 2:

Please see Comment Section IV., Response 4.

Comment 3

Proposed § 249.1.3 (Timely Filing of Job Applications).

1. Does this proposed regulation prohibit departments from accepting any late applications unless the application was received late under the conditions listed within subdivision (c)?

2. CalSTRS recommends adding language that indicates that late applications will not be accepted unless the job bulletin says otherwise. This will allow appointing powers to have the ability to accept late applications that do not fall under the conditions of (c).

Response 3:

1. Proposed Rule 249.1.2, subdivision (b) states expressly that job applications failing to satisfy required criterion, including filing the application timely, shall not be accepted.

2. The purpose of proposed Rules 249.1.2 and 249.1.3 is to promote uniform practices and procedures in the civil service hiring process so that job applications are treated fairly and equitably no matter the agency overseeing the hiring; otherwise, applicants may be treated differently depending upon the practices and procedures of the hiring agency.

Comment 4:

Proposed § 249.8 (Holds On Employee).

1. CalSTRS asks the Board to define what is considered a promotion and transfer. Are promotions based on salary or whether the employee is being appointed from a list? When considering salary, an appointment is identified as a promotion when the range differential between the maximum salary ranges is more than 10%.

2. For employees providing notice of their transfer or promotion, do "from" departments need to ensure that the employee is cleared to be hired by the "to" department? In some cases, employees may only have a tentative offer where they may need to clear hiring requirements such as a background investigation before a firm offer can be made to them. At which point are departments able to accept the notice from the employee? Tentative offer or firm offer?

3. CalSTRS recommends adding the ability for the employee to provide verbal notice to their current appointing power when they have accepted another position.

Response 4:

1. Please refer to Rules 231 et seq. and Government Code sections 18525.1 and 18950 et seq. In sum, though, factors in determining whether a promotion is appropriate include salary and list eligibility.

2. Proposed Rule 249.8 has been further amended to clarify that the hiring agency must provide notice to the employee's current appointing power. The best practice would be for the hiring agency to provide notice to the "from" agency after it has determined the employee has passed any hiring requirements and is given a "firm offer" which the employee accepts.

3. Verbal notice might be regarded as easier; however, requiring a written notice ensures no miscommunications or misunderstandings, thus avoiding unnecessary legal disagreements.

Comment 5:

Proposed § 280.1 (Written Justification for Limited-Term Positions).

Proposed Rule 280.1, subdivision (b) requires written justifications for limited term positions with the date of the signing, the representative's name, title, address, e-mail address, and telephone number. Is a handwritten signature required for this justification?

Response 5:

Proposed Rule 280.1, subdivision (b) has been further amended to clarify that handwritten, electronic, or digital signatures are acceptable.

Comment 6:

Proposed § 428 (Voluntary Transfers In General).

1. Proposed Rule 428, subdivision (a) states "Employees in state civil service shall be eligible for appointment to positions in state civil service by way of transfer, without examination, only as set forth in this article". This language appears to conflict with Rule 250 where applicants are required to meet the minimum qualifications of the classification to which they wish to transfer. CalSTRS recommends adding language referencing Rule 250 to this subdivision.

2. Proposed Rule 428, subdivision (b) states "classes that are substantially the same salary range or salary level shall be considered to involve substantially the same level of duties, responsibility, and salary for purposes of transfer without an examination…" Does this proposed section change the way appointing powers apply current SPB Rule 430 where transfers between classes must involve substantially the same level of duties, responsibility, and salary? Are appointing powers only required to compare salary ranges and levels between classes when determining if a transfer is appropriate?

Response 6:

1. The intent of proposed Rule 428 is to set general standards. Proposed Rule 429, which is in the same Article as proposed Rule 428, makes clear that appointing powers may allow employees to voluntarily transfer between classes when the employee possesses any licenses, certificates, or registration required in the "to" class, and satisfies the minimum qualifications of the "to" class.

2. No change is intended. Proposed Rule 428, subdivision (b) is based upon the first paragraph of current Rule 430 with minor stylistic and wording changes that do not have substantive impact. There is a wording difference but without material impact. Instead of saying "criteria" as current Rule 430 states the proposed regulation is more specific and specifies that the criteria is "substantially the same salary range or salary level."

Comment 7:

Proposed § 433 (Effective Date of Voluntary Transfers).

If proposed Rule 433 is specific for voluntary transfers, what is a voluntary transfer?

Response 7:

Proposed Rule 433 has been stricken for those reasons stated in Comment Section III, Response 10. As to the term "voluntary," it is commonly used and sufficiently clear so as not to require further definition.

Comment 8:

Proposed § 438 (Temporary Assignment Loans in General).

Subdivision (a)(1) states that temporary assignments or loan of an employee shall be for providing training and development through such methods as defined in Rule 430…" Proposed Rule 430 pertains to "Appointments Not Permitted to Transfer". Is this proposed Rule 438, subdivision (a)(1) referring to the correct section?

Response 8:

Rules 438, subdivision (a)(1) was intended to reference Rule 437. Accordingly, proposed Rule 438 is further amended to change reference therein from Rule 430 to Rule 437.

Comment 9:

Proposed § 438.6 (Use of Out-of-Class Experience).

For minimum qualifications purposes, if an employee claims they have out-of-class experience from a different department that occurred years ago, is the appointing power required to verify that out-of-class experience with the employee's former department? If the employee does not have valid documentation, are appointing powers not required to accept the out-of-class experience?

Response 9:

This regulation does not require appointing powers to verify out-of-class experience with the employee's former department. To be used, however, the experience must be verified as set forth in Rule 212.

Comment 10:

Proposed § 439.3 (Selection Process for Training and Development Assignments).

For subdivision (a), CalSTRS recommends replacing "and" with "or" in the sentence that says "To be competitive, the selection process shall involve interviews that use job-related criteria and any other selection instrument or procedure designed to objectively and fairly evaluate and compare candidates". Revision of this language will allow appointing powers to have the ability to either conduct interviews or determine another

method of evaluation to compare candidates such as using a statement of qualifications.

Response 10:

To ensure reasonable flexibility for hiring agencies that is consistent with a merit based hiring system, reference to interviews has been stricken. In relevant part, proposed subdivision (a) states, “To be competitive, the selection process shall involve the use of job-related criteria and any other selection instrument or procedure designed to objectively and fairly evaluate and compare the candidates.” Other changes are stylistic and technical.

Comment 11:

Proposed § 439.4 (Successful Completion of a Training and Development Assignment).

1. Proposed Rule 439.4, subdivision (a) provides that employees shall have the right of return to his or her former position after successful completion of a training and development assignment that was not the position the employee held prior to the assignment. Does the employee have an absolute right of return to their former position or can they be placed into another equivalent classification?

2. Proposed Rule 439.4, subdivision (b)(1) states that employees may be appointed to the same position in which they served the training and development assignment provided their appointment is by way of transfer or demotion. If the employee is appointed via list appointment instead of transfer, would it still meet is condition? CalSTRS recommends adding “list appointment” to proposed Rule 439.4, subdivision (b)(1) as an appointment type.

Response 11:

1. Government Code section 19050.8 provides an absolute right of return to the employee’s former position, which is defined in Government Code section 18522. Section 18522 defines “former position,” in relevant part, to include with “the concurrence of both the appointing power and the employee, a position in a different classification to which the same appointing power could have assigned” the employee in accordance with civil service laws and rules.

2. “List appointment” is added to this proposed rule. For an explanation, please see Comment Section IV, Response No. 6 and Comment Section X, Response and Comment No. 1.

Comment 12:

Proposed § 440.2 (Advertising for Available Temporary Assignments to Meet Compelling Program or Management Needs).

The appointing power is required to advertise temporary assignments for compelling program or management needs on CalHR's website and in physical locations. What is considered a "physical location"? Bulletin boards? Intranet sites?

Response 12:

The Board has simplified the advertisement requirement to be "posted in a manner designed to provide fair, equitable notice to all eligible candidates."

VI.

Summary of Written Comments from Christine M. Zimmer, Staff Services Manager I, California Highway Patrol (CHP).

Comment 1:

All Proposed Changes.

CHP asks that all references to "he" or "she" in the regulations should be replaced with gender neutral terms, such as "the applicant," "the candidate," or "the employee."

Response 1:

The Board may at some point in the future consider this request; however, the use of "he or she" is a neutral based phrase. Additionally, CHP's request is a non-substantive style preference that would require going beyond the scope of this regulatory action, since regulations not included in this action would be impacted.

Comment 2:

Proposed § 249.1 (Advertising For Job Vacancies).

1. Does the reference in subdivision (b) to "advertising may be limited to geographic areas within which qualified job seekers could reasonably be expected to accept the opportunity without a change of residence" refer to hard-to-recruit geographic areas?

2. How would an appointing power learn if a particular geographic area had candidates with disabilities, since information related to disabilities is confidential?

3. As to subdivision (c), which concerns alternatives to the specified advertising process, how would an appointing power know if another method of advertisement would be effective to recruit candidates with disabilities, as disability information is confidential?

Response 2:

1. This proposed rule does not pertain expressly to hard-to-recruit geographic areas, but does permit advertising to be limited to geographic areas where qualified candidates could reasonably be expected to accept employment without a change in residence.

2. The policy of the state is to encourage and enable individuals with a disability to participate fully in the social and economic life of the state and for qualified individuals with a disability to be employed in state service on the same terms and conditions as the nondisabled, consistent with applicable state or federal laws. (Gov. Code, § 19230.) In addition, each state agency is required to establish an effective affirmative action program to ensure that individuals with a disability, who are capable of remunerative employment, have access to positions in state service on an equal and competitive basis with the general population. (Gov. Code § 19232.) To this end, each state agency must set goals and timetables annually. CalHR is required to outline specific actions to improve the representation of individuals with disabilities in the state workforce. (Gov. Code §§ 19232 & 19233.) This proposed rule is consistent with this state policy.

   While certain laws may protect personal information, such as medical information, this does not mean that recruitment efforts aimed at hiring qualified persons with disabilities is somehow unduly burdensome because of confidentiality laws. For example, the Employment Development Department (EDD) is committed to enhancing employment opportunities for people with disabilities. Through the America's Job Center of CaliforniaSM (AJCC), the EDD provides universal access for services, ensuring that all job applicants with disabilities receive equal employment opportunities as any candidate. The EDD also provides assistance to job seekers with disabilities who need additional services to become qualified for employment, including referrals to job openings or training, vocational counseling, job search assistance and workshops, testing, and referrals to supportive services in the community. Other examples of recruitment include using the LEAP program, attending job fairs and bulletin boards specific to job seekers with disabilities, and seeking the consultation of vocational rehabilitation agencies at the local and state level (e.g., CalHR, EDD, Department of Rehabilitation, Department of Education, and Department of Social Services.)

3. Please see response immediately above.

Comment 3:

Proposed § 249.1.1 (Job Announcements).

Subdivision (a)(8) is a duplication of subdivision (a)(6).

Response 3:

Please see Comment Section IV, Response 4(1).

Comment 4:

Proposed § 249.1.2 (Job Applications).

1. As set forth in subdivisions (a) and (e), does an "online application system" also include sending application forms via e-mail?

2. For subdivision (c), does this rule imply that, unless the applicant obtained subsequent employment after they applied for the original civil service examination, the same exact application used to apply for the examination could be submitted to apply for the vacancy? The concern is that, if the applicant is allowed to re-submit, or use the same application used to apply for the civil service examination, this could lead to the omission of derogatory information on the employment application. For departments who conduct background checks this could be interpreted as the individual not being forthcoming or honest, which is not conducive to Rule 172. For departments who do not conduct background checks, this may still pose an issue of dishonesty; however, it may not be discovered until much later in the individual's employment and may have the potential to lead to disciplinary issues.

3. Under subdivision (d), will CalHR release a new updated revision of the application form, which expands and/or modifies the Examination and Certification Online System to allow for additional employment history? Currently, the application is limited on its ability to provide employment history.

Response 4:

1. The term "online application system" is intended to be generic and broad to allow for future improvements, features, and innovation in HR technology. Therefore, it is conceivable that the state's online application system could include sending application forms via email. As discussed above, CalHR is responsible for carrying out personnel operations pursuant to, among other things, Board rules. This would include any statewide civil service online application system. Accordingly, if CHP has suggestions for improvement to the system, those should be addressed to CalHR.

2. The intent of this regulation is to make the job application process as smooth and convenient as reasonably possible for job seekers and departments alike. To that end, the regulation allows the same application only if it "satisfies the information required for the employment application form." Therefore, if the job application announcement seeks additional information not originally required for the examination, the application used for the examination could not be used to apply for the job.

3. This is a good and important question. As stated in the response above, if CHP has suggestions for improvement to the system, those should be addressed to CalHR.

Comment 5:

Proposed § 249.1.3 (Timely Filing of Job Applications).

Does the proposed policy set forth in subdivision (a)(3) concerning electronic transmission also mean that applicants can apply via e-mail as well? If yes, will this be up to the appointing power?

Response 5:

The term “electronically transmitted” is intended to be generic and broad to allow for future improvements, features, and innovation in HR technology. In addition, the intent of this rule is not to set standards for how applications are filed, but to define what a timely filed job application is. Thus, CHP’s comment raises issues that are beyond the scope of this proposed rule and involve operational features of the state civil service system. Therefore, these questions are best addressed to CalHR. (See Gov. Code § 18502 [grants CalHR the powers, duties, and authorities necessary to operate the state civil service system pursuant to, among other things, Board rules.])

Comment 6:

Proposed § 249.8 (Holds On Employees).

Subdivisions (a) and (b) do not specify to whom the employee must provide a written notice of the transfer, voluntary demotion, or promotion. Is the employee to provide notice to their supervisor or manager, personnel office, personnel liaison, or would the department be implied?

Response 6:

Please see Comment Section II, Response 1. As noted above, this proposed rule has been further amended to add the following language: “(c) For purposes of this rule, “written notice” may include an e-mail where both the appointing power and hiring agency agree that the written notice may be made by way of e-mail from the hiring agency’s designee to the appointing power’s designee.” In part, the intent of this amendment is to clarify that email communication, if agreed upon, will satisfy this rule for purposes of written notice. The term “designee” is used so as to avoid making the rule rigid, or overly strict or burdensome. For instance, there may be some departments that desire the direct supervisor to be the designee while others prefer their personnel office to be the designee. From a practical perspective, it is presumed that the individuals who need to know about the employment change will communicate and sort out who are the designees.

Comment 7:

Proposed § 433 (Effective Date of Voluntary Transfers).

1. In the Initial Statement of Reasons document, the title of No. 17, Adopt Section 428, was documented incorrectly as Advertising for Job Vacancies; the correct title is Voluntary Transfers in General.

2. Proposed Rules 249.8 and 433 should mirror each other to ensure it is clear who should be providing the written notice and by whom. Additionally, CHP recommends that proposed Rule 433 include voluntary demotions.

Response 7:

1. In reviewing No. 17, it correctly states the title of proposed Rule 428 as "Voluntary Transfers In General." However, CHP correctly points out that the proposed rule was mistitled, not under No. 17, however, but under No. 25, where the proposed rule is referenced and referred to as "Advertising for Job Vacancies." For purposes of clarity, it is noted that the correct title for proposed Rule 428 is "Voluntary Transfers In General."

2. Regarding further changes to proposed Rule 433, as discussed above, the proposed rule has been stricken.

Comment 8:

Proposed § 434 (Involuntary Transfers).

CHP recommends modifying this proposed rule to include situations where an involuntary transfer would be appropriate. In addition, the CHP asks whether an employee has any appeal rights if involuntarily transferred and, if so, whether those rights should be referenced in the regulation.

Response 8:

The intent of this proposed regulation is to specify the process and technical mechanics for an involuntary transfer, as opposed to the grounds for an involuntary transfer.

For purposes of consistency, the term "positions" has been changed to "appointments."

Comment 9:

Proposed § 438.1 (Period of Time for the Temporary Assignment or Loan).

1. What is meant by "between jurisdictions," as used in subdivision (c)?

2. Does subdivision (c) refer to apprenticeship programs only or can other temporary assignments (such as training and development or compelling management needs assignments) or loans of employees last up to four years or 48 months as well?

Response 9:

1. This is a good question and should be clarified in the proposed regulation. Accordingly, the following is added to subdivision (c): "Between jurisdictions" means situations where an employee is on a temporary assignment or loan to a federal, county, city, or local agency, board, commission, department, district or similar non-state governmental entity."

2. Subdivision (c) refers to temporary assignments or loans without specificity as to the purpose of the assignment or loan. (See proposed Rule 438.) Therefore, the four years or 48 months is not limited to a particular type of temporary assignment or loan, although the rule is limited to temporary assignments or loans that are made "between jurisdictions." For instance, there could be a temporary assignment between jurisdictions for purposes of training. In addition, upon further review, this proposed regulation should make clear that temporary assignments within an agency or between agencies may be extended as specified, but prior approval by the Executive Officer is required before the apprenticeship program begins.

VII.

Summary of Written Comments from Darci Haesche, Chief, Human Resources Branch, California Department of Health Care Services (DHCS).

Comment 1:

Proposed § 249.1.1 (Job Announcements).

1. DHCS asks whether the prohibition in subdivision (a)(7) against internal cutoff periods or dates means that the department cannot list vacancies as "until filled" and then have periodic internal cutoff dates to establish candidate pools without pulling the advertisement.

2. Subdivisions (a)(6) and (8) are identical.

3. The department currently fills limited term positions with permanent employees. Subdivision (c) only speaks to if a "position" is limited term and then becomes permanent. If the department advertises that the "appointment" is "limited term but may become permanent" but the "position" remains limited term, is the department

not allowed to change the incumbent's tenure status from limited term to permanent? Can the department only make this tenure change if the position itself changes from limited term to permanent? Why would the incumbent's tenure depend on the tenure of the position? The language needs to be revised to clarify that the incumbent can be appointed permanent regardless of the position tenure.

Response 1:

1. The intent of subdivision (a)(7) is to ensure fairness and transparency, so that interested job seekers have the opportunity to apply for jobs timely. Unadvertised cutoff dates may benefit some job seekers who, for whatever reason, learn of those dates to the detriment of other job seekers who do not. Transparency in job advertisements also assists in creating robust qualified pools of applicants. To ensure, however, that the rule is not overly strict or rigid, it is further amended as follows:

   > The final filing date for applications. The job vacancy may be advertised as "until filled." Where a position is advertised as "until filled," the appointing power may have periodic cutoff dates for submitting applications and other required materials provided the cutoff dates are included on the job announcement. Internal cutoff periods or dates that are not included on the job announcement are prohibited.

2. Please see Comment Section IV, Response 4.1.

3. The incumbent's tenure depends upon the tenure of the position because LT positions are limited in duration and involve reinstatement rights. Once an LT position ends (e.g., two years have elapsed), a permanent employee would have reinstatement rights to their former position. (Gov. Code, § 19140.5.) An employee who fills an LT position and does not, for example, have probationary or permanent status in a previous position, would have no reinstatement rights because they have no former position (see Gov. Code, § 18522) to which reinstatement rights would attach. Therefore, to change the status of such an LT employee to permanent would create legal and practical complications as to where they would move within civil service when the LT position ends.

   In addition, underlying this comment is the suggestion that an LT position is not necessarily limited in duration. It should be noted that if a position is limited term then the position is required to be limited in duration regardless of whether a permanent employee fills the position. (Gov. Code §§ 19080.3 & 19083.)

   Upon further review, however, modification to Rule 151.5 [Limited Term Eligible Lists] is being made to avoid any confusion with proposed Rule 249.1.1, subdivision (c). The amendments to Rule 151.5 will add the following text, which is underlined: "No person shall be given a permanent appointment nor gain permanent status by

appointment from such a limited term eligible list, unless advertising for a limited term position complies with the requirements of section 249.1.1, subdivision (c).”

Comment 2:

Proposed § 280.1 (Written Justification for Limited-term Positions).

Subdivision (a) appears to refer to the Budget Change Proposal (BCP) process. When would a department convert an existing position to a limited-term position? Positions, via a BCP process, are either authorized as permanent or departments are provided with limited term funding. When limited term funding is extended, only the funding is extended, when limited term funding becomes a permanent position, the position will be authorized. However, doesn't this process happen through the Department of Finance? Is this section referring to justifications for changes in **“**appointments?**”**

Response 2:

Rule 280.1 is referring to limited-term appointments. The words “position” and “positions” have been changed to “appointment” and “appointments,” respectively.

Comment 3:

Proposed § 428 (Voluntary Transfers in General).

1. Does subdivision (e) mean that for transfers an employee can only use classes in which the employee has passed probation or whether they can use both? Is this speaking to the fact that they can use both?

2. The phrase “passed probation and attained permanent status in” suggests these are now requirements for transfer. If this is not the intent, the language needs to be revised. If this is the intent, what problem is it seeking to solve by changing the long-standing ability to transfer from probationary or permanent status?

3. Prior transfer eligibility was determined based on an employee's last/highest A01 appointment and applicable transfer rules. This section implies that permanent status in a class determines the highest salary range for purposes of transfer eligibility. However, what if the employee did not have an A01 appointment to this class?

Response 3:

1. This proposed rule addresses the situation where an employee has passed probation and attained permanent status in more than one classification. In that instance, the employee may use the class which has the highest salary range for purposes of transfer eligibility.

2. The intent of subdivision (e) is not to limit transfers. As noted in Response 1, this proposed rule addresses the situation where an employee has passed probation and attained permanent status in more than one classification.

3. As to transfers, Rule 250 requires that employees satisfy the minimum qualifications of the class to which they seek appointment or have previously passed probation and achieved permanent status in that same classification. Proposed subdivision (e) applies where an employee has passed probation and attained permanent status in more than one classification. In such a situation, the employee may use the highest salary range for purposes of transfer eligibility.

Comment 4:

Proposed § 429 (Voluntary Transfers Between Classes).

1. The language in proposed subdivision (b), namely, "or (2) had probationary status" appears to conflict with proposed Rule 428, subdivision (e)'s requirement that employees must pass probation and achieve permanent status prior to using the class for transfer eligibility. If an employee cannot transfer from a probationary class, how can the employee reinstate to a probationary class?

2. Does subdivision (b) apply regardless of the employee's the last/highest A01 appointment?

Response 4:

1. There is not a conflict. Proposed subdivision (b) concerns situations where "reinstatement" rather than "transfer" applies. As discussed above, proposed Rule 429, subdivision (e) concerns a different scenario and uses the term "may."

2. Yes.

Comment 5:

Proposed § 431 (Employees with Temporary or Limited-Term Status).

Should "position" be changed to "appointment" in subdivisions (b) and (c). Also, are these subdivisions about the tenure/status of the position or the employee's appointment tenure/status.

Response 5:

The term "position" has been changed to "appointment".

Comment 6:

Proposed § 432 (Proposed Salary Upon Transfer to a Deep Class).

If the intent is to clarify that a T&D assignment can be used to protect an employee's salary upon transfer to a deep class, this should be rewritten to provide better clarity. The intent is unclear in its current iteration.

Response 6:

The salary side of civil service is within CalHR's jurisdiction, not the Board's. Therefore, the intent of this proposed regulation is not to clarify that a T&D assignment can be used to protect an employee's salary, but to clarify that CalHR has the discretion to protect employees against salary loss.

Comment 7:

Proposed § 249.8 and § 433.

These sections are in conflict in that proposed Rule 249.8 requires employee notice and proposed Rule 433 requires hiring agency notice.

Response 7:

Please see Comment Section II, Response 1, and Comment Section III, Response 10.

Comment 8:

Proposed § 434 (Involuntary Transfers).

In subdivision (d), should "positions" be "appointments?" Is this about the tenure/status of the position or the employee's appointment tenure/status?

Response 8:

Please see Response 5 above.

Comment 9:

Proposed § 435 (Consecutive Transfers).

Does this conflict with proposed sections 428 and 429? If the last/highest A01 is not included in determining transfer eligibility, but instead the permanent status in the highest paid salary is a determining factor and employees transfer to incrementally

higher salaries, over time, couldn't a transfer result in a "promotional" salary when compared to the last/highest A01 appointment?

Response 9:

No. The term consecutive should be given its common and ordinary meaning, which is generally understood to mean one after the other in order or successive. Over time, however, is not the same as consecutive. The Board has had the consecutive transfer rule for many years without issue. The intent of the rule is to ensure that transfers are not used in succession to actually promote an employee without examination. The rule is also meant not to be so strict as to prevent the good faith movement of employees within civil service, particularly those with significant experience and qualifications, from being able to transfer without examination.

Comment 10:

Proposed § 439.1 (Eligibility for Appointment to a Training and Development Assignment).

Regarding the requirement in subdivision (a) that the employee have permanent status in his or her current classification, DHCS asks why probationary status, with previous permanent status, is insufficient, as was the standard previously. Limiting eligibility to permanent status is not in the best benefit of the employee nor the appointing power.

Response 10:

Even though current Rule 438 allows employees who have probationary status and who previously have had permanent status and who, since such permanent status, have had no break in service due to a permanent separation, to seek a T&D assignment, there are complications with this standard. The Board has historically advised against giving T&D assignments to probationary employees when there is any question concerning the employee's ability to perform the duties of their appointment class. (*Id*. at p. 340.3.) This direction is because T&D time counts toward completion of probation. (*Ibid*.) In addition, to redirect a probationer to a T&D assignment would allow him or her to bypass the final phase of the selection process for the appointment classification. (See Cal. Code Regs., tit. 2, § 86.2, subd. (a)(1).)

Traditionally, the Board has encouraged the use of training and development assignments to: (1) provide employees broader experiences and skills that will improve their ability to perform in their current assignments; (2) help prepare employees for future promotion; or (3) to facilitate their entry into new occupational fields. (PMPPM, § 340, p. 340.2.) "The second and third uses are key elements of the State's upward mobility programs for employees in lower paying jobs." (*Ibid*.) Training and development assignments, however, are intended primarily for employees who are still seeking basic experience and skills in a particular occupational area. (*Id*. p. 340.5.) Affording the opportunity of T&D assignments to employees with permanent status in their current

position encourages economy, efficiency, and devotion to state service by encouraging career opportunities and promotional advancement of employees who have shown a willingness and ability to perform their jobs successfully. (See Gov. Code, § 18951.) Successfully completing a probationary period shows an employee's willingness and ability to perform their job successfully.

Comment 11:

Proposed § 440.1 (Eligibility for Temporary Assignments to Meet Compelling Program or Management Needs).

1. Proposed Rule 440.1, subdivision (a) allows for the selection of a candidate who has probationary status; however, if the CMNA is outside the scope of the class specification, how can you properly evaluate the candidate during the probationary period? Would the probationary period be on hold until the conclusion of the CMNA?

2. Proposed Rule 440.1, subdivision (b) requires the selected candidate to meet the minimum qualifications (MQs). If the assignment is temporary due to an urgent, critical project, and an employee, who possesses the required KSAs, is selected for the CMNA, what is the purpose of the employee meeting the MQs? The purpose of the CMNA is matching the KSAs to the project, even when the duties are outside the employee's class specification. In turn, the employee does not receive any salary increases as a result of the CMNA, nor do they receive any out of class experience.

Response 11:

1. The purpose of this proposed rule is to ensure that hiring managers have a robust and qualified applicant pool. In line with this purpose, proposed Rule 440.1 requires that the employee have permanent or probationary status in their current class, and, if the temporary assignment to meet compelling program or management needs is to a different class, they meet the minimum qualifications of that class.

   To ensure clarity and uniform practices relative to these types of temporary assignments where a probationary employee is used, proposed Rule 440.1 is further modified to add the following language:

   > If a probationer is selected for the assignment and the assignment is within the scope of the employee's appointment classification, the employee shall continue to serve the probationary period and be evaluated as required by applicable laws and rules. If a probationer is

selected for the assignment and the assignment is outside the scope of the probationer's appointment classification and the required number of probationary hours pursuant to section 321 have not been worked in the appointment classification, the probationer upon return to his or her appointment classification shall continue on probation until he or she has worked the required number of hours, as set forth in section 321, subdivision (a). If the appointing power finds that an extension of time is needed, the appointing power may seek an extension as provided in section 321.

2. The purpose of temporary assignments to meet a compelling program or management needs is to enable agencies to obtain needed expertise. (Gov. Code, § 19050.8.) To be consistent with the other two types of temporary assignments, the Board has removed the requirement that the employee meet the minimum qualifications.

Comment 12:

Proposed § 440.2 (Advertising for Available Temporary Assignments to Meet Compelling Program or Management Needs) and § 440.3 (Hiring Process for Temporary Assignments to Meet Compelling Program or Management Needs).

The point of the compelling management needs assignment (CMNA) is to allow the appointing power the discretion to identify an employee with specific KSAs to perform an often urgent, special project that requires that same skill set, on a short-term basis, while leaving the employee in his/her current classification. What purpose does the three day advertisement serve other than to delay the start of the project? This negatively impacts the appointing power's ability to meet departmental management needs and may require training when the selected individual is expected to come in and hit the ground running. If there is an issue with CMNAs, what about tightening up the justification requirements for submission to CalHR, instead of requiring the recruitment process?

Response 12:

These types of assignments may be used by employees to meet MQs for promotional and open examinations. Accordingly, such assignments could be used to preselect certain favored employees to the detriment of other qualified employees. Therefore, a recruitment process is required. The recruitment process is not unduly burdensome but is intended to weigh and balance the needs of departments with opportunities for employees. There is a documentation requirement (see proposed Rule 440.3) and this requirement does not, in itself, resolve the potential for misuse of the assignments.

However, the Board has simplified the advertisement requirement to be “posted in a manner designed to provide fair, equitable notice to all eligible candidates.”

Comment 13:

Proposed § 440.4 (Successful Completion of Temporary Assignments to Meet Compelling Program or Management Needs).

The experience gained in the CMNA should be included as part of the employee’s experience serving in their current class. This proposed rule suggests that the employee is appointed to a different classification, which is not recommended given that the assignment is temporary, the duties may not be consistent with a class specification, and the employee selected should already possess the required KSAs to perform the unique project. The employee’s current classification should be the catalyst for meeting MQs.

Response 13:

It is not the intent of this proposed rule that an employee serving in an assignment to meet compelling program or management needs is “appointed” to a different classification. Temporary assignments are not appointments. Government Code section 19050.8 by its express terms contemplates that employees in such assignments may serve in a class other than their appointed class. Section 19050.8 also requires that employees can use such out-of-class experience for future career opportunities. Proposed Rule 440.4 is thus consistent and in keeping with section 19050.8.

For purposes of clarity and consistency, the proposed rule is further amended to refer to “open, open-promotional, promotional, or non-promotional examinations.” The proposed rule is also further amended to take into account situations in which the temporary assignment ends early for reasons other than disciplinary or unsatisfactory performance. Under such circumstances, the employee should be allowed to use the experience to meet the MQs for the specified examinations. Therefore, the title of the proposed rule is further modified to strike “successful” so as to conform with the afore-stated changes.

VIII.

Summary of Written Comments from Sean Hammer, Chief, Human Resources, Department of State Hospitals (DSH).

Comment 1:

Proposed § 174 (Applications for Civil Service Examinations).

In subdivision (h)(2), there are no parameters and/or time limits for accepting applications filed in error to the wrong agency. DSH suggests adding the following language: “applications received within 30 days of the final filing date.” Leaving this open for much longer could potentially derail an entire exam plan.

Response 1:

Further modification to this proposed rule is unnecessary, as subdivision (h)(2) has been the Board’s rule for many years without any issues.

Comment 2:

Proposed § 249.1.3 (Timely Filing of Job Applications).

Regarding subdivision (c)(2), what would be the process if an application is filed in error to the wrong agency and received after an appointment has already been made.

Response 2:

This question seems directed at what impact would there be on the appointment in such a circumstance. These facts alone would be insufficient to warrant undoing the appointment.

Comment 3:

Proposed § 425 (Definitions).

1. As to subdivision (5)(A), “.50 cents” should be changed to read “50 cents” or “$0.50.”

2. As to subdivision (7) and for purposes of clarity, the subdivision should read as follows:

> (7) “Current class” means the class currently held by the employee.
> (a) For purposes of transfer eligibility determination, “current class” or “from” class includes an employee’s highest permanent list appointment.

3. Regarding subdivision (9) and for clarity, the subdivision should read as follows:

> “Deep class” means a single classification in which every position allocated to that classification can be assigned any duty within the class concept. Deep classes include alternate ranges and are identified by Footnote 21 in the Pay Scales.

Response 3:

1. The Board will make this change to “50 cents.”

2. Sometimes the term “current class” and “from class,” for purposes of transfer eligibility, are used interchangeably. Accordingly, for purposes of clarity, subdivision (7) is further amended as follows:

> “Current class” means the class currently held by the employee, and for purposes of transfer eligibility determination, “current class,” which may also be referred to as the “from class,” shall include an employee’s highest permanent list appointment.

3. The comment is correct that footnote 21 in the Pay Scales refers to deep classes with alternate ranges. However, should the Pay Scales be modified or changed, it would require changing the regulation. Therefore, the reference to footnote 21 is best done in the HR manual, as a reference and explanation.

Comment 4:

Proposed § 428 (Voluntary Transfers In General).

For clarity, DSH suggests changing subdivision (e) to read as follows:

> Employees who have permanent or probationary status in more than one classification, for which they were appointed from an employment list, may use the class which has the highest salary range for purposes of transfer eligibility.

Response 4:

DSH’s proposal clarifies that employees with permanent or probationary status may transfer to another position or classification. Confusion, though, may arise with the requirements of Rule 250, subdivision (d). Under DSH’s recommended language, an employee whose highest list appointment was to a class in which they did not complete probation, for whatever reason, could be used for purposes of transfers. Because this proposed change requires that the appointment must be from an employment list in order to use the highest salary range, it can be reasonably inferred that the employee satisfied the MQs of that classification. Still, this change may cause confusion with Rule 250, subdivision (d), which requires that persons selected for appointment, including transfers, must satisfy the minimum qualifications of the classification to which he or she is appointed or have previously passed probation and achieved permanent status in that same classification.

In addition, DSH’s recommendation raises the issue of whether it would be sound policy for a merit based hiring system to allow an employee to use the highest list appointment for a class they did not pass probation in. Allowing employees to use their highest list appointment codifies long-standing practice, which benefits civil service and employees alike because it promotes employees to use their talent, knowledge, and experience in

different areas of state civil service without negative salary consequences. Also, to consider though, is that employees should be encouraged and motivated to be successful in the classifications and positions they choose and are selected to fill. In addition, as discussed above, the probationary period is the final phase in the selection process and thus is a basic and important element of an effective merit based hiring system. Granted, there may be non-merit related reasons an employee does not complete a probationary period and returns to a previous position; still, successful completion of probation demonstrates merit and fitness to successfully perform the duties and tasks of the classification and position of that classification.

On balance, the Board declines to make the modification suggested by DSH. This will avoid any confusion with Rule 250 and also promote merit principles relative to the movement of employees by way of transfers. However, clarification in the rule is needed with regard to an employee's status. Accordingly, proposed Rule 428, subdivision (a) is further modified as follows:

> Employees in state civil service with permanent or probationary status shall be eligible for appointment to positions in state civil service by way of transfer, without examination, only as set forth in this Article.

Comment 5:

Proposed § 432 (Salary Loss Upon Transfer to a Deep Class).

When is this proposed rule applicable? Salary rules already allow salary alone to take an employee to the higher range and T&D can be used to maintain a salary while an employee gains experience to move to another class.

Response 5:

Please see Comment Section VII, Response 6.

Comment 6:

Proposed § 434 (Involuntary Transfers).

DSH asks whether subdivision (c)(1) should read: "The employee satisfies the minimum qualifications of the "to" class and the "to" class has substantially the same salary range or salary level of, or an amount lower than, the employee's current class."

Response 6:

This change is unnecessary, since "substantially the same salary range or salary level" is defined in proposed Rule 425, subdivision (a)(3).

Comment 7:

Proposed § 548.95 (Transfer or Demotion of Employee).

This language refers to both “appointing power” and “appointing powers.” DSH asks the Board to clarify if transfers or demotions under this section would only be within one appointing power or could it also be between two appointing powers.

Response 7:

The references to “appointing power” and “appointing powers” is the current wording in Rule 548.95, because the rule permits transfers and demotions both within a single appointing power and between two appointing powers.

IX.

Summary of Written Comments from Jill O’Connell, Chief, Human Resource Services Division, Employment Development Department (EDD).

Comment 1:

Proposed § 439.4 (Successful Completion of a Training and Development Assignment).

As proposed, subdivision (b)(1) does not allow for a candidate to appoint via list appointment, but specifically requires appointments to be made either by transfer or demotion. In some cases, a candidate may accept a T&D assignment into a position with a promotional salary range (as allowed in the proposed CCR 439.2) to which they would not otherwise be able to transfer. In addition, T&Ds are frequently made to allow an individual to gain experience needed to meet the minimum qualifications and/or the alternative range criteria. If eligible and reachable, it is often to the benefit of the employee to be appointed from a list, even if the individual could laterally transfer to the position.

EDD thus requests the following addition to proposed Rule 439.4, subdivision (b)(1): “The appointment is by way of transfer, list appointment, or demotion.”

Response 1:

For those reasons specified by EDD, proposed Rule 439.4 is further modified as recommended.

X.

Summary of Written Comments from Jennifer Steward, Examination & Certification/Hiring Supervisor, Franchise Tax Board (FTB).

Comment 1:

Proposed § 249.1.1 (Job Announcements).

1. Whether under subdivisions (5) and (9), agencies who provide "clear instructions" that candidates are not to include any confidential information (such as that specified in 2 CCR § 249.6) within their application documents, would these instructions protect agencies in the event such confidential information is voluntarily provided by the candidate and released to the hiring unit?

2. Alternatively, even if such instructions are included in the job announcement and covered within proposed Rule 249.1, would this make agencies out of compliance with CCR 249.6 (Redaction of Confidential Information on Candidate Documentation), if the voluntarily provided information is released?

Response 2:

1. A candidate could knowingly and voluntarily provide confidential information or, while voluntarily providing such information not realize, for whatever reason, that the information is confidential. In such situations, departments should consult with their legal units to determine the proper course of action.

2. Rule 249.6 is not a part of this rulemaking action, and therefore, this question is technically beyond the scope of this action. However, FTB raises an important question, because the protection of confidential information is vital, particularly in this day and age, given the potential for illegitimate uses. Rule 249.1 requires, in relevant part, that during the hiring process, the appointing power shall ensure that "all confidential information on candidate related documentation" is redacted or removed before providing copies to any person who is not assigned to work in the appointing power's human resources or personnel unit. This rule applies regardless of whether a candidate voluntarily provides the information, knowingly or unknowingly.

Comment 2:

Proposed § 249.1.2 (Job Applications).

(1) Whether subdivision (a) means that agencies are not required to accept electronic applications and may instead opt to accept hard copy applications only, whether in person or via mail.

(2) Whether subdivision (a) also means that agencies may accept electronic applications through electronic systems other than the Examination and Certification Online System (ECOS).

Response 2:

(1) Yes.

(2) The intent of the reference to "online application system" is to focus on the technology and not the name of that technology, since it might change in the future. As discussed above, CalHR administers the civil service system pursuant to applicable laws, including Board regulations. This proposed rule does not address which online application system agencies must use. This question should be directed to CalHR.

Comment 3:

Proposed Section 249.1.3 (Timely Filing of Job Applications).

1. To clarify that late applications may only be accepted if either subdivision (c)(1) or (c)(2) applies, and in no other situations, FTB suggests adding "only" to subdivision (c), as follows: "A job application not timely filed as specified in subdivision (a) shall only be accepted if one of the following conditions applies:"

2. Subdivision (c)(2) implies that if candidates send or submit their application timely but to an incorrect agency who did not post the job announcement, then the correct agency still has the obligation to accept this application as timely regardless of the timeframe in which they then receive the application. While FTB agrees that allowing a late filing where the application was delayed for the reasons specified in (c)(1), FTB believes it is unreasonable for agencies to accept applications as timely under (c)(2) when received much later in the hiring process due to an error on the candidate's part.

Response 3:

1. Adding "only" may add emphasis, but the structure of the sentence is sufficiently clear that the listed conditions set the parameters for when a late application shall be accepted.

2. This proposed rule is the same as the rule for exam applications. The rule for exam applications has not been problematic. (See current Rule 174, subd. (c)(2).) Additionally, while proposed Rule 249.1.3, subdivision (c)(2) requires the agency to accept the job application, it does not concern the screening and evaluation of the application. Accordingly, this proposed rule should not prove to be unreasonable or overly burdensome.

XI.

Summary of Written and Oral Comments from Jana A. Ellingson-Kegel, Staff Attorney, SEIU Local 1000 (SEIU).

Comment 1:

Proposed § 249.1 (Advertising for Job Vacancies).

1. SEIU agrees with the Board's stated goal but recommends that the Board incorporate a stronger statement of best practices, to encourage expansive advertising of vacant positions in accordance with merit principles.

2. SEIU believes that eliminating the seven-day required posting period for job vacancies contained in the eliminated Rule 444, which 249.1 replaces in part, may have a detrimental impact on the hiring process, including but not limited to failing to assure that qualified employees are aware of vacancies.

Response 1:

1. Proposed Rule 249.1 is further modified to incorporate a stronger statement of best practices. The language "broad and inclusive" is thus added to subdivision (b).

2. The following language is added to the proposed regulation: "Advance notice of the job opportunity shall be posted for at least seven days at worksites of eligible departmental employees. No later than the first day of posting, appointing powers are encouraged to inform eligible departmental employees of the job opportunity via electronic means, such as by group email." Other changes are technical in nature to conform to this added paragraph.

Comment 2:

Proposed § 425 (Definitions).

It appears that many of the definitions provided in new Rule 425 duplicate existing CalHR rules and/or regulations. SEIU recommends that terms already defined by CalHR be incorporated by reference, rather than included in new SPB regulations. SEIU is concerned that the definitions of identical terms may not remain consistent if included independently in both the Board's and CalHR's regulations.

Response 2:

No potentially inconsistent definitions have been identified, nor does SEIU specify which definitions it is referring to. Regardless, CalHR administers the civil service merit system pursuant to Board regulations and policy.

Comment 3:

Proposed § 428 (Voluntary Transfers In General) and § 429 (Voluntary Transfers Between Classes).

SEIU believes these sections exceed the Board's authority, and go beyond the merit principle to interfere with bargaining rights. The changes to these sections are not allowable without bargaining and cannot be implemented. The Board's authority concerning transfers is captured already in the Rule 250 requirements. Going beyond this exceeds the boundaries of the Board's authority, as set forth in *Pacific Legal Foundation v. Brown*. Since the inception of collective bargaining, state employee unions have bargained rights concerning transfers. For the Board to intercede now, 38 years later, is simply disruptive to collective bargaining rights.

Response 3:

The Board disagrees that its authority to adopt regulations concerning transfers is subject to or precluded by collective bargaining. The Board's authority to adopt regulations is firmly established in the California Constitution. (Cal. Const., art. VII, § 3, subd. (a); *Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 184; *State Personnel Board v. Department of Personnel Administration* (2005) 37 Cal.4th 512, 526.) That authority exists independent of the state's collective bargaining obligations. The Board's exercise of authority to adopt regulations does not come within the scope of the Dills Act. (*Cal Fire Local 2881 v. Public Employment Relations Board* (2018) 20 Cal.App.5th 813, 818-819.) Additionally, transfers involve appointments and thus fall squarely within the Board's constitutional and statutory jurisdiction.

Comment 4:

Proposed § 437 (Definitions).

SEIU objects to the definition of "coaching" contained in Rule 437(a). It is inappropriate for a peer, presumably often and usually a rank-and-file employee, to be responsible for instruction and correction without appropriate training and clear and unambiguous delineation regarding his or her role. Further, this regulation interferes with bargaining, adding terms in excess of the Board's authority without proper negotiation with impacted bargaining units. The change to this section is not allowable without bargaining and cannot be implemented.

Response 4:

It is common for more experienced staff to assist newer, less experienced staff. Accordingly, to formally add this concept to training and development assignments should prove to strengthen and expand the types of training and development assignments appointing powers consider and implement. Employees who act as peer coaches are not held responsible for the success of their peer. Please also see the above response regarding bargaining.

Comment 5:

Proposed § 439.2 (Training and Development Classification).

SEIU concurs with the Board's stated intent to simplify the Rule 438 requirements, so that training and development assignments can be used to a greater extent than they are being used currently. To that end, SEIU urges that the exemption for assignments involving an apprenticeship program now proposed for Rule 439.2(a)(3)(C) be added to Rule 439.2(a)(3)(B). This section, as currently drafted and utilized, has the impact of excluding lower wage workers from eligibility for apprenticeships based solely on their pay rate. Apprenticeships, based on guidance from the Department of Industrial Relations, Division of Apprenticeship Standards (DIR-DAS), typically fall specifically in journey classifications. A related lower classification often exists, but is not included in the apprenticeship program.

SEIU also believes that the structural barrier to apprenticeships created by the current formation of Rule 439.2(a)(3)(B) has a disproportionate impact on women, and has recently deemed several individuals, who were otherwise well qualified and informally selected, as ineligible for apprenticeship positions in Information Technology classifications. Current salary does not indicate whether an individual can perform the work. Adding the exemption for assignments involving an approved apprenticeship program to Rule 439.2(a)(3)(B) would encourage the use of a meaningful but narrow subset of training and development assignments, which have been specifically reviewed and approved for the purpose of building skills while providing the State with a highly skilled and experienced workforce. This change is in line with the Board's stated objective in revising this section.

Response 5:

Apprenticeship programs approved by the Department of Industrial Relations are an excellent way for employees to gain new and valuable knowledge and skills. Such a result is a win-win for departments and employees alike. SEIU is correct that making this proposed change would be consistent with the goals of this rulemaking action and also avoid any unintended negative impacts on certain groups of employees.

SEIU's comment has prompted further review and consideration of the proposed training and development rule. Proposed subdivision (a)(3) provides:

(3) A different classification with a promotional salary range provided that all of the following apply:

(A) The higher salaried class is the class in the employee's desired occupational area that will provide the appropriate training experience.

(B) There is not another class nearer in salary to the employee's current class that will provide the appropriate training experience. If such a class exists, that class shall be used for purposes of the training and development assignment.

(C) The higher salaried class is not in the same class series as the employee's current class, unless the training and development assignment involves an apprenticeship program approved by the Department of Industrial Relations, Division of Apprenticeship Standards.

While proposed subdivision (3)(A) may have been an appropriate consideration under the previous scheme for training and development assignments, proposed Rule 439 requires T&D assignments to be designed to provide employees the opportunity to obtain any or a combination of specified experiences. Subdivision (3)(A) is thus arguably unnecessary. Proposed subdivision (3)(B) may unnecessarily limit an employee's opportunity for a training and development assignment. Additionally, whether there is a class nearer in salary that would provide the appropriate training experience may be subject to an avoidable debate that is ultimately subjective as to what is "appropriate." Regarding subdivision (3)(C), an employee on a training and development assignment may use the experience gained to meet MQs for an examination, including promotional examinations. Thus, whether the higher salaried class is *not* in the same class series as the employee's current class has little if any bearing on merit principles, since the employee is required to test for a promotional classification.

It is the intent of this rulemaking action to simplify, streamline, and encourage T&D assignments where appropriate. Therefore, proposed Rule 439.2 is further amended by striking subdivisions (3)(A), (B) and (C) and amending subdivision (3) as follows: A different classification with a promotional salary range regardless of whether the higher salaried class is in the same class series or not. Reference to apprenticeships is stricken as no longer necessary given the afore-stated changes.

XII.

Conclusion

Upon further review it was found that proposed Rule 438.7 did not include a note for authority and reference. While the Board is not required to include regulatory notes, it has been added for purposes of consistency and ease of reference. This is a technical

amendment without substantive impact. Also, upon further review, it was found that Rule 249 required further clarification.

The Board appreciates the comments and feedback it received regarding these proposed regulations. The modified text with the changes clearly indicated are available to the public as stated in the Notice of Modification to Text of Proposed Regulation.